

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD MARINO,	:	
	:	
Plaintiff,	:	Case No. 07-cv-7726 (RJH)(DFE)
	:	
v.	:	ECF CASE
	:	
GLOBAL CAPITAL HOLDINGS MANAGEMENT, LLC and JOSEPH PALLADINO,	:	<u>AFFIDAVIT OF MICHAEL H. LEVISON IN SUPPORT OF MOTION TO ENTER JUDGMENT</u>
	:	
Defendants.	:	
	:	
	:	
	:	

MICHAEL H. LEVISON, being duly sworn, deposes and says:

1. I am counsel at the firm Day Pitney LLP, attorneys for Plaintiff Richard Marino ("Marino").

2. I have personal knowledge of the facts and circumstances set forth herein, except for matters stated on information and belief, and as to those matters, I believe the information to be true. If called as a witness, I could and would competently testify to the matters set forth herein.

3. I submit this Affidavit in support of this motion for an Order, pursuant to the terms of this Court's Agreed Order For Dismissal dated January 3, 2008 and the terms of the Settlement Agreement (as that term is defined below), (a) re-opening this Action and (b) entering Judgment against the Defendants Global Capital Holdings Management, LLC ("GCHM") and Joseph Palladino ("Palladino" and together with GCHM, the "Defendants"), jointly and

severally, in the amount of \$3,500,000.00, plus post-judgment interest from the date of entry of Judgment at the federal rate set forth in 28 U.S.C. §1961.

Agreed Order

4. Annexed hereto as **Exhibit “A”** and incorporated herein by reference is a true and correct copy of the Agreed Order (Docket No. 16.)

Acknowledgment of Default

5. On January 31, 2008, Palladino sent an e-mail to your affiant wherein he stated, *inter alia*, that he “regret[ed] to inform [your affiant] that [he was] unable to deliver [the] first payment for the benefit of Rich Marino as required by” the terms of that certain Settlement Agreement dated December 17, 2007 entered into in connection with the above-referenced matter (the “Settlement Agreement”). (A true and correct copy of the Settlement Agreement is annexed to the accompanying Affidavit of Richard Marino (the “Marino Affidavit”) as Exhibit “1” and is incorporated herein by reference.) (A true and correct copy of Mr. Palladino’s January 31, 2008 e-mail is annexed hereto as **Exhibit “B”** and is incorporated herein by reference.)

Notice of Default

6. Section 1.20 of the Settlement Agreement provides that any “Notice of Default . . . shall be sent . . . if to any of the [Defendants], via e-mail to jpalladino@mac.com and via facsimile to Joseph Palladino, Facsimile: 215-243-7518 . . .” (See Settlement Agreement at ¶1.20)

7. On February 1, 2008 and in accordance with Section 1.20 of the Settlement Agreement, your affiant delivered to the Defendants a notice of default (the “Notice

of Default”), as the Defendants had failed to make the Initial Payment (as that term is defined in the Marino Affidavit) in a timely manner. (A true and correct copy of the Notice of Default is annexed hereto as **Exhibit “C”** and is incorporated herein by reference.)

8. The Notice of Default also made clear that if the Defendants failed to cure the aforementioned Event of Default by February 11, 2008, Marino would proceed to enforce his rights under the Settlement Agreement.

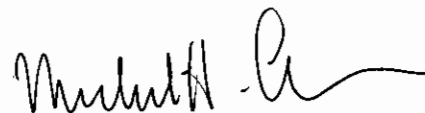
9. As set forth in Marino Affidavit, the Defendants failed to pay the Initial Payment by February 11, 2008. Thus, they have failed to cure the Event of Default in a timely fashion.

Proposed Judgment

10. Annexed hereto as **Exhibit “D”** and incorporated herein by reference is proposed Judgment.

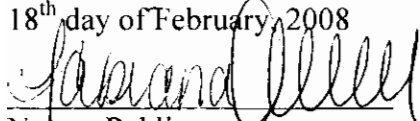
Service Of This Order To Show Cause

11. It is respectfully submitted that Marino should be permitted to serve the instant motion upon the Defendants in accordance with the means set forth in the Settlement Agreement; i.e., via e-mail and facsimile.



MICHAEL H. LEVISON

Sworn to before me this
18th day of February, 2008



Notary Public

FABIANA C. SIQUEIRA
NOTARY PUBLIC OF NEW JERSEY
Qualified in Union County
My Commission Expires 09/25/2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD MARINO,

Plaintiff,

v.

GLOBAL CAPITAL HOLDINGS
MANAGEMENT, LLC and JOSEPH
PALLADINO,

Defendants.

:

:

:

:

:

:

:

:

Case No. 07-cv-7726 (RJH)(DFE)

ECF CASE

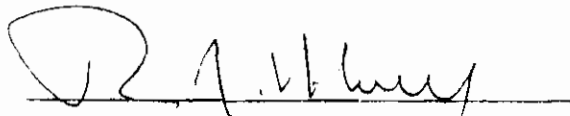
USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/3/08

AGREED ORDER FOR DISMISSAL

Plaintiff Richard Marino ("Marino"), Global Capital Holdings Management, LLC ("GCIIM") and Joseph Palladino ("Palladino") (hereinafter collectively, the "Parties" and each individually a "Party") hereby agree that:

1. The above-captioned action is hereby dismissed without prejudice and without costs as against any Party.
2. The Court shall retain jurisdiction over this action in order to enforce the terms of that certain settlement agreement entered into between the Parties (the "Settlement Agreement").
3. Marino may move this Court to re-open this action in order to enforce the terms of the Settlement Agreement and to enter Judgment in accordance with the terms of the Settlement Agreement.

Dated:



HON. RICHARD J. HOWELL
UNITED STATES DISTRICT COURT JUDGE

Exhibit B

Levison, Michael

From: Joseph Palladino [jpalladino@mac.com]
Sent: Thursday, January 31, 2008 4:58 PM
To: Levison, Michael
Cc: Joseph Sahid
Subject: Marino v. Palladino

Mr Levison:

I regret to inform you that today January, 31 2008, I am unable to deliver to you may first payment for the benefit of Rich Marino as required by our agreement signed December 17,2007.

I trust you will notify your client and deliver required paperwork.

I will notify you of developments that will allow me to fulfill my obligations as required.

My apologies,
Joseph Palladino



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, D.C.

MICHAEL H. LEVISON
Attorney At Law

7 Times Square
New York, NY 10036

T: 212-297-2401 F: (212) 916-2940
MLEvison@daypitney.com

February 1, 2008

Via E-Mail (jpalladino@mac.com); Via Facsimile (215-243-7518)

Joseph Palladino
Global Holdings Management, LLC

Re: Richard Marino v. Global Holdings Management, LLC and Joseph Palladino
Index No.: 2007 Civ. 07726

NOTICE OF DEFAULT

Dear Mr. Palladino

In accordance with the terms of the Settlement Agreement dated December 17, 2007 (the "Agreement") entered into in connection with the above-referenced matter, please take notice that an Event of Default (as that term is defined in the Agreement) has occurred, as the Debtors (as that term is defined in the Agreement) have failed to make the Initial Payment (as that term is defined in the Agreement) in a timely manner.

If you fail to cure the aforementioned Event of Default within (10) calendar days of delivery of this letter (i.e., by February 11, 2008), we shall proceed to enforce Mr. Marino's rights under the Agreement.

In addition, please take notice that a Late Fee (as that term is defined in the Agreement) is hereby due and payable in accordance with Paragraph 1.10.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Michael H. Levison', written over a horizontal line.

Michael H. Levison

cc: Joseph R. Sahid, Esq. (via e-mail: sahid@nysbar.com)

Message Confirmation Report

FEB-01-2008 10:36 AM FRI

Fax Number : 212 682 3435
 Name : DAY PITNEY LLP

Name/Number : #79612152437518
 Page : 2
 Start Time : FEB-01-2008 10:35AM FRI
 Elapsed Time : 00'58"
 Mode : Fine ECM
 Results : [O.K]

Day Pitney LLP

7 Times Square
 New York, NY 10036-7311
 Phone # (212) 297-5800
 Fax # (212) 916-2940

New York New Jersey Connecticut Boston Washington, D.C.

DATE: February 1, 2008

To	Joseph Palladino	Facsimile Number:	(215) 243-7518
Company:		Phone Number:	

From	Phone Number
Michael H. Levison	(212) 297-2401

Client/Matter Number: 403024.108873 (Marino)

Number of pages including transmittal sheets

Original will be sent: Overnight Mail ☐ E-mail ☐ Will not be sent ☒

Comments: Please see enclosed letter.

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify our Fax Department at (212) 297-5805. Thank you.

IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations, we advise you that any tax advice contained in this communication (including any attachments) is not intended to be used for, and cannot be used for the purpose of avoiding penalties under the United States federal tax laws.

FOR SENDER:

If there is a problem transmitting this fax and you are not in the office, should the operator call you at home?

☐ YES ☐ NO

FAX OPERATOR ONLY

Name: _____

Date Sent: _____

Time: _____

Levison, Michael

From: Levison, Michael
Sent: Friday, February 01, 2008 10:55 AM
To: 'Joseph Palladino'
Cc: Joseph Sahid
Subject: Marino

Please see attached letter.



Marino - 2.1.08 ltr
to Joseph ...

MICHAEL H. LEVISON
Attorney at Law
Day Pitney LLP
7 Times Square | New York NY 10036-7311 | t (212) 297 2401 | f (212) 916 2940
mlevison@daypitney.com www.daypitney.com

IRS Circular 230 Notice: Any tax advice provided herein (including any attachments) is not
intended or written to be used, and cannot be used, for the purpose of avoiding penalties that
may be imposed on any taxpayer.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD MARINO,

:

Plaintiff,

:

Case No. 07-cv-7726 (RJH)(DFE)

v.

:

ECF CASE

**GLOBAL CAPITAL HOLDINGS
MANAGEMENT, LLC and JOSEPH
PALLADINO,**

:

:

Defendants.

:

:

:

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff Richard Marino shall have Judgment against Global Capital Holdings Management, LLC and Joseph Palladino, jointly and severally, in the amount of \$3,500,000.00.
2. Post-judgment interest shall accrue on the amount set forth in paragraph 1 at the rate set forth in 28 U.S.C. §1961.

Dated:

HON. RICHARD J. HOWELL
UNITED STATES DISTRICT COURT JUDGE